

# ARKANSAS SUPREME COURT

No. CR 06-704

NOT DESIGNATED FOR PUBLICATION

WALTER MCCULLOUGH  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered September 21, 2006

*PRO SE* MOTION FOR BELATED  
APPEAL [CIRCUIT COURT OF  
CRAIGHEAD COUNTY, CR 2004-840,  
HON. VICTOR LAMONT HILL,  
JUDGE]

MOTION DENIED

## PER CURIAM

Walter McCullough was convicted by a jury of a terroristic act and first-degree battery, and received an aggregate sentence of 960 months' imprisonment. The judgment and commitment order was filed on April 27, 2005. Although represented by trial counsel, petitioner filed in the trial court a *pro se* motion for new trial. The trial court did not act on the motion and it was thus deemed denied by operation of law on the thirtieth day.<sup>1</sup> Before us now is petitioner's *pro se* motion for belated appeal of the denial of petitioner's motion for new trial pursuant to Ark. R. App. P. – Crim. 2(e).

In the motion for belated appeal, petitioner argues that "errant handling" of pleadings by the circuit court clerk resulted in the "illegal denial" of his motion for new trial.<sup>2</sup> He further claims that

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<sup>1</sup>See *McCullough v. State*, CR 05-723 (Ark. September 22, 2005) (*per curiam*), wherein we denied a petition for writ of mandamus filed in this court by petitioner requesting that this court direct the trial court to act on his motion for new trial.

<sup>2</sup>Petitioner now claims that he attempted to prevent the trial court from ruling on the motion for new trial, but in the petition for writ of mandamus filed in this court, he sought a decision by the trial court on the motion.

he timely filed in the trial court a notice of appeal from the denial of the motion, and later filed a motion for rule on the circuit court clerk. Petitioner contends that the totality of his actions show sufficient good cause for granting his motion for belated appeal, as he attempted to overcome the “external impediment” that prevented petitioner from timely filing his notice of appeal.

The history of the pleadings filed in the trial court explains the course of events. Trial counsel timely filed a notice of appeal from the judgment and commitment order.<sup>3</sup> Subsequently, petitioner filed the *pro se* motion for new trial without the knowledge of trial counsel on April 29, 2005. The record discloses that on July 12, 2005, petitioner filed a *pro se* motion for rule on the circuit court clerk seeking the transmission to this court of all pleadings, beginning with the motion for new trial, as the record on appeal. Later, on July 24, 2005, petitioner filed a *pro se* amendment to trial counsel’s notice of appeal to include an appeal from the denial of his *pro se* motion for new trial. This “amended” notice of appeal stated that the motion for new trial was denied in an order on June 29, 2005.<sup>4</sup>

Petitioner maintains that the circuit court clerk was an “external impediment” that prevented a timely notice of appeal from being filed. However, it appears that petitioner simply miscalculated the date the notice of appeal should have been filed or did not take into account that the motion for new trial would have been deemed denied on the thirtieth day after filing if the trial court took no

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<sup>3</sup>This appeal is currently pending before the Arkansas Court of Appeals in case number CACR 05-1183.

<sup>4</sup>The record does not reflect that any order was filed on that date. Petitioner’s motion for new trial was filed in the trial court on April 29, 2005, and again on May 12, 2005. As the trial court did not act upon the motion, petitioner’s motion was deemed denied, without entry of an order, on May 29, 2005. In order to be timely, petitioner should have filed a notice of appeal on or before June 28, 2005.

The May 12, 2005, duplicate motion for new trial was filed more than ten days after entry of the judgment and commitment order. This untimely pleading did not extend any deadlines for filing the notice of appeal.

action. Here, neither the *pro se* motion for rule on the clerk nor the *pro se* “amended” notice of appeal had any effect. Both pleadings were filed more than thirty days after the motion for new trial was deemed denied, and were thus untimely. Moreover, a motion for rule on clerk is not a substitute for a notice of appeal.

As with all matters before this court, if a petitioner fails to follow correct procedural requirements, the burden lies with the petitioner to make a showing of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). In *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004), this court clarified its treatment of motions for belated appeals in criminal cases. There, we stated that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is “good reason.” 356 Ark. at 116, 146 S.W.3d at 891. The fact that a petitioner is proceeding *pro se* does not constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*).

When proceeding *pro se*, this court has specifically held that it is not the responsibility of the circuit clerk, circuit court, or anyone other than the *petitioner* to perfect an appeal. *Sullivan, supra*. Petitioner has stated no “good reason” for failing to timely file his notice of appeal from the date the motion for new trial was deemed denied. Thus, the appeal was not perfected due to the fault of petitioner and the motion for belated appeal is denied.

Motion denied.